

**IN THE CIRCUIT COURT OF ROANE COUNTY, WEST VIRGINIA**

**DEBORAH K. WRIGHT,**  
Petitioner,

v.

**Civil Action No. 06-D-209**  
Judge David W. Nibert

**MARK A. WHITE,**  
Respondent.

**Order Refusing Petition for Appeal**

This matter comes before the court upon Respondent's Petition for Appeal filed on March 30, 2007. The Respondent is represented by counsel, Lyne Ranson, the Petitioner is represented by counsel, Loren B. Howley. The Court has reviewed the Petition for Appeal, the Response to the Petition for Appeal, as well as all pertinent legal authorities. As a result of these deliberations, the Court is of the opinion to and hereby does REFUSE the Petition for Appeal.

According to West Virginia Code § 51-2A-14 (b), "the circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard." Pursuant to West Virginia Code § 51-2A-14(a), this Court may refuse, affirm in whole or in part, reverse in whole or in part, or remand the case to the family court judge.

On appeal, this Court may only consider the record, which is limited to the recording of the hearing or transcript of testimony, exhibits, and all document filed in the proceeding. W.Va. Code § 51-2A-14 (b) and 51-2A-8 (d).

The Family Court properly found that the Petitioner should be granted entry of a final order of divorce by default. This is based upon the Respondent's failure to timely answer the

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L. Ranson 10-4-07

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Petition for appeal as well as other factors including the circumstances of the case and the prejudicial effect on the Petitioner. The Respondent, in his motion for a continuance stated no valid reason for his failure to timely answer the summons served on him by certified mail on November 30, 2006 and by order of publication on December 7 and 14, 2006. There is no claim on the record of mistake, inadvertence, surprise, excusable neglect, or unavoidable cause explaining the respondent's failure to answer. There was no good cause presented to the family court that would necessitate making an exception in this case. This Court finds that the family court properly overruled the respondent's motion for continuance, and found that the petitioner was entitled to proceed with her case on default. Therefore, the assignments of error presented by the Respondent on appeal are held to be without merit based on the Petitioner's entitlement to a final order of divorce due to the default of the Respondent.

There is also pending a request by the Petitioner for attorney fees and costs incurred as a result of responding to this petition for appeal. The record indicates that the Petitioner was awarded \$1722.50 in the final order granting the divorce. This Court finds that award is sufficient considering the financial condition of the Petitioner and the facts of this case. Therefore, the request for additional attorney fees and costs is denied.

In conclusion this Court finds there was no clear error or abuse of discretion on the part of the Family Court Judge in the finding of facts and application of law to the facts.

Therefore, this Court does hereby conclude that the Family Court's final order granting the divorce is proper. Accordingly, it is **ADJUDGED** and **ORDERED** that the Petitioner's appeal is hereby **REFUSED**.

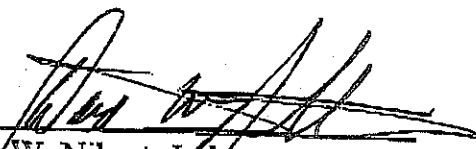
It is further **ADJUDGED** and **ORDERED** that the Petitioner's request for additional attorney fees and costs is hereby **DENIED**.

It is further ADJUDGED and ORDERED that good cause exists for this Court's decision to have exceeded the (60) day framework set by statute for deciding family court appeals as the Court was occupied with other matters.

This is a final order disposing of the appeal. The appeal is hereby stricken from the active docket of this court. No motions for reconsideration or renewals of a petition for appeal on these specific matters are permitted in this court. However, this decision may be appealed to the West Virginia Supreme Court of Appeals by filing a petition within four months and otherwise complying with the West Virginia Rules of Appellate Procedure and West Virginia Code section 58-5-1, *et seq.*

The clerk shall forward attested copies of this order to Larry Whited, Family Court Judge, Lyne Ranson, counsel for Respondent, and Loren B. Howley, counsel for Petitioner.

ENTERED this the 3<sup>rd</sup> day of October, 2007.

  
David W. Nibert, Judge

Entered in DL C.O.B. No. 41 Page 189  
this 4<sup>th</sup> day of October, 2007

IN THE FAMILY COURT OF ROANE COUNTY, WEST VIRGINIA

IN RE: The marriage of  
DEBORAH K. WRIGHT,  
Petitioner,  
and  
MARK A. WHITE,  
Respondent.

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CLERK HOUSE

Civil Action No. 06-D-209

AMENDED FINAL ORDER NUNC PRO TUNC

On January 19, 2007, the petitioner Deborah K. Wright appeared in person and by counsel Loren B. Howley, and the respondent Mark A. White did not appear for final hearing before the Honorable Larry Whited, Judge. After consideration of the summons and petition filed and served by order of publication and by certified mail on the respondent, the petitioner's financial affidavit, the affidavits of the petitioner and her attorney, and the testimony of the petitioner and her witness, the court made the findings of fact, conclusions of law and order as set forth below.

After entry of the final order, the petitioner discovered that there were three typographical errors in paragraph 3 on pages 8 and 8 of the order, which erroneously referred to "child support" rather than "spousal support." The petitioner submitted this amended final order *nunc pro tunc* to correct those typographical errors. It appearing proper to do so, the court found that this amended final order *nunc pro tunc* should be entered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The petitioner has been a bona fide resident of Roane County, West Virginia for more than one year preceding the institution of this action.

2. The respondent was a resident of Roane County, West Virginia until March 2005, when he moved to Arizona. The petitioner does not know the current home address of the respondent, although the petitioner is informed and believes that the respondent lives in the State of Arizona and that his work address is c/o Bronco Home Sales, 175 East Road 2 South, Chino Valley, Arizona 86323.

3. The parties were duly and legally married on November 17, 2000 in Kanawha County, West Virginia.

4. The parties have no children in common, and none are expected. The petitioner has two adult children from a previous relationship.

5. From the date of the marriage until on or about March 11, 2005, the parties lived together as husband and wife, and they last lived and cohabited together in Roane County, West Virginia, although the parties unsuccessfully attempted a reconciliation during a visit by the petitioner to the respondent in Arizona on January 1, 2006. The parties have lived separately and apart, without cohabitation, continuously for more than a year.

6. The petitioner is entitled to a divorce from the

respondent on the ground of more than 12 months voluntary separation.

7. Neither of the parties is a member of the Armed Forces of the United States of America, an incompetent person nor an incarcerated convict.

8. The respondent, who did not file an answer or otherwise appear in this case, has not requested alimony and he is not entitled to alimony.

9. The petitioner requested alimony, and the court finds that she should be awarded rehabilitative alimony for five years, based on the factors set forth in W.Va. Code §48-6-301 and also relative fault of the parties as provided in W.Va. Code §48-8-104. The court specifically makes the following findings in support of its award of alimony:

(a) The parties were married for more than five years before they separated, and during most of that period, the petitioner financially supported the respondent.

(b) The respondent has told the petitioner and other persons that he is earning \$160,000 a year at his current job, but he has completely failed to contribute to the support of the petitioner, who has been financially strapped and presently earns only \$90.15 per day.

(c) The respondent obtained loans from the petitioner totaling about \$30,000 for various purposes, and thereby depleted

the petitioner's retirement savings, which will have a negative impact on her life for years into the future. These loans included about \$12,000 which the respondent claimed he would invest in a trailer to sell at a profit but the petitioner later learned that the respondent had used the \$12,000 to buy drugs which he consumed, without the petitioner's knowledge. The respondent has completely failed to reimburse the petitioner for the \$30,000 which he borrowed from her, although he had the means to do so.

(d) On March 11, 2005, the respondent moved to Arizona for a better-paying job, and promised to move the petitioner out to Arizona after he got settled. On April 10, 2006, the respondent got a job as manager of a mobile home sales lot, at \$150,000 a year, he told the petitioner and others. Nonetheless, the respondent stopped providing any financial support to the petitioner and returning the petitioner's telephone calls.

(e) The respondent failed to obtain health insurance coverage for the petitioner, despite his promise to do so. Furthermore, the respondent misrepresented to the petitioner that he had obtained health insurance coverage for her, and the petitioner later learned that the respondent had only obtained health insurance coverage on himself.

(f) The respondent abandoned the petitioner, physically, emotionally and financially, and he is at fault in the dissolution of the marriage.

(g) The petitioner had to work two jobs just to make ends meet until January 8, 2007, when she was able to work a single full-time but temporary job as a substitute secretary with the Roane County Board of Education.

(h) The respondent can afford to support the petitioner, and the petitioner needs spousal support to recover from the devastating financial hardships she suffered due to the respondent's misconduct during the marriage.

10. The petitioner should be awarded reimbursement and rehabilitative alimony in the amount of \$900 per month for 60 months, which should amount be reduced to \$500 per month if and when the petitioner sooner obtains health insurance available at reasonable cost, defined as 10% or less of net monthly income, from employment. The respondent should be required to pay alimony at this rate beginning February 1, 2007 and due on the first day of each month thereafter through January 1, 2012 inclusive, unless the petitioner sooner remarries or dies. The petitioner should be required to notify the respondent in writing within 14 days if she obtains health insurance at reasonable cost through her employment, and the amount of monthly alimony should be automatically reduced from \$900 to \$500 beginning in the following month.

11. Each party is entitled to sole ownership, use and possession of any separate property he or she owns, including property purchased during the marriage with separate funds.



12. The only marital asset is a 2004 Honda ATV, with a fair market value of about \$5500. The respondent represented to the petitioner when he purchased the ATV new for \$7,995 that he borrowed the entire purchase price from the dealer and his boss Steve Means cosigned the promissory note for his purchase money loan. Later the respondent represented to the petitioner that Steve Means was pressuring him to convey the ATV to Mr. Means because the respondent was in default on the loan payments and Mr. Means was making the payments on his behalf. In March 2004 and September 2004, the petitioner contributed \$2,000 each time, a total of \$4,000, of her separate funds for the respondent to pay off the loan on the ATV, which was intended as a loan to the respondent but the respondent never repaid. The petitioner does not know whether or not the respondent actually used the loan of her separate funds to pay off the loan on the ATV, but assumes the respondent did as he promised. The petitioner should be awarded sole ownership, use and possession of the ATV. Loren B. Howley should be appointed as special commissioner to obtain a duplicate title and then convey title to the 2004 Honda ATV to the petitioner.

13. The petitioner is not aware of any marital debts except as described in paragraph 12 above.

14. Each party should be ordered to assume sole liability for his or her separate debts incurred after the date of

separation on January 2, 2006, and any debts he or she incurred that are unknown to the other party.

15. The respondent should be ordered to pay the petitioner's costs in this action, including her court costs and attorney fees, in the amount of \$1,722.60, as shown by the petitioner's attorney's affidavit.

16. The petitioner should be awarded injunctions, and the respondent should be enjoined and prohibited from (1) annoying, harassing, molesting or interfering with the petitioner or her personal liberty in any manner whatsoever, and (2) coming about the petitioner's home or place of employment.

17. The petitioner is presently employed full-time on a temporary basis by the Roane County Board of Education as a substitute secretary. The petitioner is informed and believes that the respondent is employed by Bronco Home Sales in Arizona as manager of mobile home sales.

18. The petitioner served the respondent with the summons and petition by order of publication published in *The Times Record/Roane County Reporter*, with dates of publication on December 7 and 14, 2006 and by certified mail, which the respondent received on November 30, 2006. The respondent has not filed an answer to the petition, nor otherwise appeared in this case.

19. This court has jurisdiction and venue in this action.

O R D E R

Therefore, it is ORDERED as follows:

1. The petitioner is awarded a divorce and forever freed from the bonds of matrimony existing between her and the respondent.

2. The petitioner is awarded reimbursement and rehabilitative alimony in the amount of \$900 per month for 60 months, which should amount shall be reduced to \$500 per month if and when the petitioner sooner obtains health insurance available at reasonable cost, defined as 10% or less of net monthly income, from employment. The respondent shall pay alimony in the amount of \$900 per month beginning February 1, 2007 and due on the first day of each month thereafter through January 1, 2012 inclusive, unless the petitioner sooner remarries or dies. The petitioner shall notify the respondent in writing within 14 days if she obtains health insurance at reasonable cost through her employment, and the amount of monthly alimony shall be automatically reduced from \$900 to \$500 beginning in the following month.

3. In accordance with W.Va. Code, the respondent's income shall be immediately withheld for the payment of spousal support, without regard to whether there is an arrearage. Upon entry of this Order, the respondent's source of income shall withhold so much of respondent's income as is necessary to comply with this Order, up to the maximum amount permitted by federal or

state law, and shall forward the support withheld to the Bureau of Child Support Enforcement, P.O. Box 247, Charleston, West Virginia 25321. The parties are mandatorily enjoined to cooperate with the Bureau of Child Support Enforcement to facilitate the collection of spousal support due hereunder. The respondent may pay spousal support directly to the petitioner until automatic wage withholding takes effect, and the Bureau of Child Support Enforcement shall not consider spousal support paid directly to the petitioner as arrears unless the respondent files an affidavit showing spousal support has not been paid.

4. As long as the respondent is obligated to pay spousal support, both parties shall report to the Bureau of Child Support Enforcement and the other party within 14 days any changes in the following information: (1) their address, (2) phone number, (3) employment status, (4) financial circumstances that would affect child support calculations by more than 15%, or (5) availability of health insurance through employment at reasonable cost, defined as 10% or less of net monthly income.

5. Each party is awarded sole ownership, use and possession of any separate property he or she owns, including property purchased during the marriage with separate funds.

7. The petitioner is awarded sole ownership, use and possession of the 2004 Honda ATV. Loren B. Howley is appointed as special commissioner to obtain a duplicate title and convey title

to the 2004 Honda ATV to the petitioner.

8. Each party shall assume sole liability for his or her separate debts incurred after the date of separation on January 2, 2006, and any debts he or she incurred that are unknown to the other party.

9. The petitioner is awarded judgment against the respondent in the amount of \$1,722.60 for her costs in this action, including her court costs and attorney fees.

10. The petitioner is awarded injunctions, and the respondent is enjoined and prohibited from (1) annoying, harassing, molesting or interfering with the petitioner or her personal liberty in any manner whatsoever, and (2) coming about the petitioner's home or place of employment.

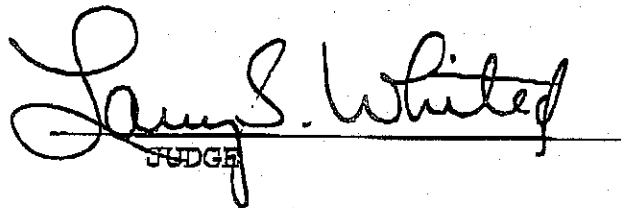
11. The Clerk shall send certified copies of this order to (1) the petitioner Deborah K. Wright, 134 Charletson Rd., Spencer, WV 25276, (2) Loren B. Howley, attorney for petitioner, P.O. Box 580, Grantsville, West Virginia 26147, and (3) the respondent Mark A. White at his last known work address, c/o Bronco Home Sales, 175 East Road 2 South, Chino Valley, Arizona 86323.

**NOTICE:** The amount of monthly spousal support can be modified as provided by law based upon a change in the financial or other circumstances of the parties if those circumstances are among those considered by the court. In order to make the modification, a party must file a motion to modify the support amount. Unless a

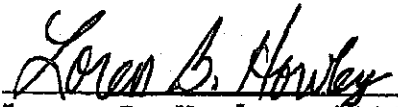
motion to modify is filed, the spousal support amount will continue to be due and cannot later be changed retroactively even though there has been a change of circumstances since the entry of the order. Self-help forms for modification can be found at the circuit clerk's office.

NOTICE: Pursuant to Rule 22(c) of the Rules of Practice and Procedure for Family Law, effective January 1, 2002, the parties are hereby given notice and informed that: (1) THIS IS A FINAL ORDER; (2) any party aggrieved by the final order may take an appeal either to the circuit court or directly to the supreme court of appeals; (3) a petition for appeal to the circuit court may be filed by either party within thirty days after entry of the final order; and (4) in order to appeal directly to the supreme court, both parties must file, within fourteen days after entry of the final order, a joint notice of intent to appeal and waiver of right to appeal to circuit court.



ENTER this 26<sup>th</sup> day of January, 2007.

  
JUDGE

Prepared by:

  
Loren B. Howley, #1800  
Attorney for Petitioner  
P.O. Box 580  
Grantsville, WV 26147

TRUE COPY TESTE:

  
Bewick Swathouse  
CLERK of CIRCUIT COURT of  
ROANE COUNTY, WEST VIRGINIA  
  
Andree Hochman  
DEPUTY